



BILLING CODE: 3410-34-P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2014-0028]

RIN 0579-AD97

Importation of Fresh Peppers From Peru Into the Continental United States and the Territories

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the fruits and vegetables regulations to allow the importation of fresh peppers into the continental United States and the Territories from Peru. As a condition of entry, the fruit would have to be produced in accordance with a systems approach that would include requirements for fruit fly trapping, pre-harvest inspections, production sites, and packinghouse procedures designed to exclude quarantine pests. The fruit would also be required to be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the national plant protection organization of Peru with an additional declaration stating that the consignment was produced in accordance with the requirements of the systems approach. This action would allow for the importation of untreated fresh peppers from Peru while continuing to provide protection against the introduction of plant pests into the continental United States and the Territories.

DATES: We will consider all comments that we receive on or before [Insert date 60 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0028>.
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2014-0028, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0028> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. George Balady, Senior Regulatory Policy Specialist, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851-2240.

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in “Subpart–Fruits and Vegetables” (7 CFR 319.56-1 through 319.56-71, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and

dissemination of plant pests that are new to or not widely distributed within the United States.

The regulations currently do not authorize the importation of fresh peppers from Peru.

The national plant protection organization (NPPO) of Peru has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations in order to allow the common chili pepper (Capsicum annuum L.), aji pepper (Capsicum baccatum L.), habanero chili (Capsicum chinense Jacq.), Thai pepper (Capsicum frutescens L.), and rocoto (Capsicum pubescens Ruiz & Pav.) to be imported into the continental United States and the Territories (the Commonwealth of Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, and any other territory or possession of the United States). (Hereafter we refer to these species as “peppers.”)

As part of our evaluation of Peru’s request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). Copies of the PRA and the RMD may be obtained from the person listed under FOR FURTHER INFORMATION CONTACT or viewed on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

The PRA, titled “Importation of Fresh Pepper Fruit – Capsicum annuum L., Capsicum baccatum L., Capsicum chinense Jacq., Capsicum frutescens L., and Capsicum pubescens Ruiz & Pav. – from Peru into the Continental United States and Territories,” evaluates the risks associated with the importation of fresh peppers from Peru into the continental United States and the Territories. The RMD relies upon the findings of the PRA to determine the phytosanitary measures necessary to ensure the safe importation into the continental United States and the Territories of fresh peppers from Peru.

The PRA identifies four quarantine pests present in Peru that could be introduced into the continental United States and the Territories through the importation of peppers:

- Anastrepha fraterculus (Wiedemann), South American fruit fly.
- Ceratitis capitata (Wiedemann), Mediterranean fruit fly.
- Neoleucinodes elegantalis (Guenée), a fruit boring moth.
- Puccinia pampeana Speg., a pathogenic fungus that causes pepper and green pepper rust.

A quarantine pest is defined in § 319.56-2 of the regulations as a pest of potential economic importance to the area endangered thereby and not yet present there, or present but not widely distributed and being officially controlled. Plant pest risk potentials associated with the importation of peppers from Peru into the continental United States and the Territories were determined by estimating the consequences and likelihood of introduction of each quarantine pest into the continental United States and the Territories and ranking the risk potential as high, medium, or low. The PRA determined that three of these four pests—A. fraterculus, C. capitata, and P. pampeana—pose a high risk of following the pathway of peppers from Peru into the continental United States and the Territories and having negative effects on U.S. agriculture. The remaining pest—N. elegantalis—was rated as having a medium risk potential.

Based on the conclusions of the PRA and the RMD, we are proposing to allow the importation of peppers from Peru into the continental United States and the Territories subject to a systems approach. The conditions in the systems approach that we are proposing are described below. These conditions would be added to the regulations in a new § 319.56-73.

Operational Workplan

Proposed paragraph (a) of § 319.56-73 would require the NPPO of Peru to provide an operational workplan to APHIS that details the activities that the NPPO would, subject to APHIS' approval of the workplan, carry out to meet the requirements of proposed § 319.56-73. The operational workplan would have to include and describe in detail the quarantine pest survey intervals and other specific requirements in proposed § 319.56-73.

An operational workplan is an agreement between APHIS' Plant Protection and Quarantine program, officials of the NPPO of a foreign government, and, when necessary, foreign commercial entities, that specifies in detail the phytosanitary measures that will be carried out to comply with our regulations governing the importation of a specific commodity. Operational workplans apply only to the signatory parties and establish detailed procedures and guidance for the day-to-day operations of specific import/export programs. Operational workplans also establish how specific phytosanitary issues are dealt with in the exporting country and make clear who is responsible for dealing with those issues. The implementation of a systems approach typically requires an operational workplan to be developed.

#### Commercial Consignments

Proposed paragraph (b) of § 319.56-73 would require peppers from Peru to be imported only in commercial consignments. Produce grown commercially is less likely to be infested with plant pests than noncommercial consignments. Noncommercial consignments are more prone to infestations because the commodity is often ripe to overripe, could be of a variety with unknown susceptibility to pests, and is often grown with little or no pest control. Commercial consignments, as defined in § 319.56-2, are consignments that an inspector identifies as having been imported for sale and distribution. Such identification is based on a variety of indicators, including, but not limited to: Quantity of produce, type of packing, identification of grower or

packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer.

#### Approved Production Sites

Proposed paragraph (c) of § 319.56-73 would require that the peppers be grown in a pest-free, pest-exclusionary structure approved by and registered with the Peruvian NPPO. These pest-exclusionary structures would be the only registered production sites for peppers from Peru. APHIS reserves the right to conduct audits and inspect the production sites as needed. The pest-exclusionary structures would have to be equipped with double self-closing doors to prevent inadvertent introduction of pests. In addition, any windows, vents, or openings in the pest-exclusionary structures (other than the double self-closing doors) would have to be covered with 1.6 mm screening in order to prevent the entry of pests. The 1.6 mm screening size is adequate to exclude A. fraterculus, C. capitata, and N. elegantalis, as these three pests are relatively large.

We would require the production sites to be inspected prior to harvest for N. elegantalis and P. pampeana by the Peruvian NPPO or its approved designee. (An approved designee is an entity with which the NPPO creates a formal agreement that allows that entity to certify that the appropriate procedures have been followed. The approved designee can be a contracted entity, a coalition of growers, or the growers themselves.) If, during these inspections, either of these quarantine pests or other quarantine pests is found to be generally infesting or infecting the production site, the Peruvian NPPO would immediately prohibit that production site from exporting peppers to the continental United States and the Territories and notify APHIS of the action. The prohibition would remain in effect until the Peruvian NPPO and APHIS determine that the pest risk has been mitigated.

#### Trapping Requirements

Proposed paragraph (c) of § 319.56-73 would also require trapping for A. fraterculus and C. capitata both within and around the production site. Internal trapping would have to be conducted continuously for the duration of the time the production site is used to produce peppers for export to the continental United States and the Territories. External trapping would have to be conducted beginning 2 months before export and continue until the end of harvest.

Traps with an approved protein bait would have to be placed inside the production sites at a density of four traps per hectare, with a minimum of at least two traps per structure. The traps would have to be serviced at least once every 7 days. If a single A. fraterculus or C. capitata is detected inside a registered production site or in a consignment, the Peruvian NPPO would immediately prohibit that production site from exporting peppers to the continental United States and the Territories and notify APHIS of the action. The prohibition would remain in effect until the Peruvian NPPO and APHIS agree that the risk has been mitigated.

Outside the production site, traps with an approved protein bait would have to be placed inside a buffer area 500 meters wide around the structure at a density of 1 trap per 10 hectares, with a minimum of 10 traps. At least one of these traps would have to be placed near the production site. These traps would have to be serviced at least once every 7 days.

Capture of 0.7 or more A. fraterculus or C. capitata per trap per week would delay or suspend the harvest, depending on whether harvest has begun, for consignments of peppers from that production site. The prohibition would remain in effect until the Peruvian NPPO and APHIS agree that the risk has been mitigated.

To ensure that the trapping is being properly conducted, the Peruvian NPPO or its approved designee would have to maintain records of trap placement, checking of traps, and any quarantine pest captures. The Peruvian NPPO would also have to maintain an APHIS-approved

quality control program to monitor or audit the trapping program. Trapping records must be maintained for APHIS' review.

#### Packinghouse Requirements

We are proposing several requirements for packinghouse activities, which would be contained in paragraph (d) of proposed § 319.56-73. Peppers would have to be packed for export within 24 hours of harvest in a pest-exclusionary packinghouse registered with the NPPO of Peru. Such registration would facilitate traceback of a consignment of peppers to the packinghouse in which it was packed in the event that quarantine pests were discovered in the consignment at the port of first arrival into the continental United States or the Territories. The peppers would have to be safeguarded by an insect-proof mesh, screen, or plastic tarpaulin while in transit from the production site to the packinghouse and while awaiting packing. The peppers would have to be packed for shipment to the continental United States or the Territories in insect-proof cartons or containers, or covered with insect-proof screen or plastic tarpaulin. These safeguards would have to remain intact until the arrival of the peppers in the continental United States or the Territories or the consignment would not be allowed to enter the continental United States or the Territories.

During the time that the packinghouse is in use for exporting peppers to the continental United States or the Territories, the packinghouse would only be allowed to accept peppers from registered production sites. This requirement would prevent peppers intended for export to the continental United States or the Territories from being exposed to or mixed with peppers that are not produced according to the requirements of the systems approach.

#### Phytosanitary Certificate



To certify that peppers from Peru have been grown and packed in accordance with the requirements of proposed § 319.56-73, proposed paragraph (e) would require each consignment of peppers to be accompanied by a phytosanitary certificate of inspection issued by the Peruvian NPPO with an additional declaration stating that the consignment was produced in accordance with the systems approach described in the proposed regulations.

#### Definitions

We are also proposing to add a definition for continental United States to the regulations in § 319.56-2, as it is used throughout the regulations but not defined. This definition would be identical to that used in “Subpart–Regulated Articles from Hawaii and the Territories” found in 7 CFR 318.13-2.

#### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this proposed rule on small entities. Copies of the full analysis are available by contacting the person listed under FOR FURTHER INFORMATION CONTACT or on the Regulations.gov Web site (see ADDRESSES above for instructions for accessing Regulations.gov).

Based on the information we have, there is no reason to conclude that adoption of this proposed rule would result in any significant economic effect on a substantial number of small entities. However, we do not currently have all of the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting

comments on potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from the implementation of this proposed rule.

The proposed rule would amend the regulations to allow the importation of fresh peppers from Peru into the continental United States and the Territories when a systems approach to pest risk mitigation is used to prevent the introduction of quarantine pests listed in the PRA. The systems approach would integrate prescribed mitigation measures that cumulatively achieve the appropriate level of phytosanitary protection.

Fresh peppers from Peru would compete with U.S. domestic production as well as with imports from other countries. Peru produced an average of about 9,600 metric tons (MT) of fresh peppers annually from 2005 through 2011. Over that same time period, fresh pepper exports from Peru ranged from 226 MT to 567 MT, accounting for between 2.6 and 7.0 percent of annual production.<sup>1</sup> Based on production area and yield in Peru, the PRA estimates that no more than 22 containers a year (440 MT) would be imported into the continental United States and the Territories.

Consumers base their fresh produce purchasing decisions on a number of factors besides price, including qualitative attributes such as color, shape, appearance, size, freshness, perceived health benefits, production methods, and product origin. Consumers would benefit from the additional supply of fresh peppers that imports from Peru would provide, and importers and distributors of Peruvian fresh peppers would benefit from new business opportunities. U.S. producers would face increased competition from the additional imports. However, economic effects of the proposed rule for U.S. fresh pepper producers and consumers are likely to be small.

---

<sup>1</sup> Food and Agriculture Organization of the United Nations.

The quantity expected to be imported, less than 440 MT, is the equivalent of less than 0.03 percent of annual fresh pepper consumption in the United States.

We use a non-spatial, net trade, partial equilibrium model to quantitatively assess benefits and costs of the proposed rule. As a measure of the sensitivity of possible impacts, we assume three annual import volumes of fresh peppers from Peru: 220, 440, and 660 MT. In all cases, we find that consumer welfare gains would outweigh producer welfare losses, yielding small positive net welfare impacts. Modeled net economic gains for the United States due to fresh pepper imports from Peru range from \$231,000 to \$692,000. Actual levels of additional fresh peppers that would be imported from Peru as a result of this rule would depend on relative prices, seasonality, and various qualitative factors as mentioned above.

We have identified industries that could be affected by the proposed rule based on the North American Industry Classification System. Based on Small Business Administration size standards, small entities are prominent in those industries for which information on business size composition is available.

#### Executive Order 12988

This proposed rule would allow fresh peppers to be imported into the continental United States and the Territories from Peru. If this proposed rule is adopted, State and local laws and regulations regarding fresh peppers imported under this rule would be preempted while the fruit is in foreign commerce. Fresh vegetables are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. If this proposed rule is adopted, no retroactive effect will be given to this

rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2014-0028. Please send a copy of your comments to: (1) APHIS, using one of the methods described under ADDRESSES at the beginning of this document, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

APHIS is proposing to amend the fruits and vegetables regulations to allow the importation of fresh peppers into the continental United States and the Territories from Peru. As a condition of entry, the fruit would have to be produced in accordance with a systems approach that would include requirements for fruit fly trapping, pre-harvest inspections, production sites, and packinghouse procedures designed to exclude quarantine pests. The fruit would also be required to be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the national plant protection organization of Peru with an additional declaration stating that the consignment was produced in accordance with the requirements of the systems approach.

Allowing the importation of untreated fresh peppers into the continental United States and the Territories from Peru will require an operational workplan, registered production sites, trapping records, quality control program, packinghouse registrations, and phytosanitary certificates.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 1.3 hours per response.

Respondents: NPPO, producers, exporters.

Estimated annual number of respondents: 15.

Estimated annual number of responses per respondent: 13.

Estimated annual number of responses: 197.

Estimated total annual burden on respondents: 266 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

#### E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851-2727.

#### List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

#### PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56-2 is amended by adding, in alphabetical order, a definition of continental United States as follows:

§ 319.56-2 Definitions.

\* \* \* \* \*

Continental United States. The 48 contiguous States, Alaska, and the District of Columbia.

\* \* \* \* \*

3. Section 319.56-73 is added to read as follows:

§ 319.56-73 Peppers from Peru.

Fresh peppers (Capsicum annum L., Capsicum baccatum L., Capsicum chinense Jacq., Capsicum frutescens L., and Capsicum pubescens Ruiz & Pav.) may be imported into the continental United States and its Territories only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: Anastrepha fraterculus (Wiedemann), South American fruit fly; Ceratitis capitata (Wiedemann), Mediterranean fruit fly; Neoleucinodes elegantalis (Guenée), a fruit boring moth; and Puccinia pampeana Speg., a pathogenic fungus that causes pepper and green pepper rust.

(a) Operational workplan. The national plant protection organization (NPPO) of Peru must provide an operational workplan to APHIS that details the activities that the NPPO of Peru will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. The operational workplan must include and describe the quarantine pest survey intervals and other specific requirements as set forth in this section.

(b) Commercial consignments. Peppers from Peru may be imported in commercial consignments only.

(c) Production site requirements. (1) Pepper production sites must consist of pest-exclusionary structures, which must have double self-closing doors and have all other windows, openings, and vents covered with 1.6 mm (or less) screening.

(2) All production sites that participate in the export program must be registered with the Peruvian NPPO.

(3) The production sites must be inspected prior to harvest for Neoleucinodes elegantalis (Guenée) and Puccinia pampeana Speg. If either of these pests, or other quarantine pests, are found to be generally infesting or infecting the production site, the NPPO of Peru will immediately prohibit that production site from exporting peppers to the continental United States and its Territories and notify APHIS of this action. The prohibition will remain in effect until the Peruvian NPPO and APHIS determine that the pest risk has been mitigated.

(4) The production sites must contain traps for the detection of Anastrepha fraterculus (Wiedemann) and Ceratitis capitata (Wiedemann) both within and around the structures. Internal traps must be set for the duration of the time the production site is used to produce peppers for export to the continental United States or the Territories. External traps must be set for at least 2 months before export and trapping must continue to the end of the harvest as follows:

(i) Traps with an approved protein bait must be placed inside the production site at a density of four traps per hectare, with a minimum of two traps per structure. Traps must be serviced once every 7 days.

(ii) If a single Anastrepha fraterculus (Wiedemann) or Ceratitis capitata (Wiedemann) is detected inside a registered production site or in a consignment, the registered production site will lose its ability to export peppers to the continental United States or its Territories until APHIS and the Peruvian NPPO mutually determine that risk mitigation is achieved.

(iii) Traps with an approved protein bait must be placed inside a buffer area 500 meters wide around the registered production site, at a density of 1 trap per 10 hectares and a minimum



of 10 traps. These traps must be checked at least once every 7 days. At least one of these traps must be near the production site.

(iv) Capture of 0.7 or more Anastrepha fraterculus (Wiedemann) or Ceratitis capitata (Wiedemann) per trap per week will delay or suspend the harvest, depending on whether harvest has begun, for consignments of peppers from that registered production site until APHIS and the Peruvian NPPO can agree that the pest risk has been mitigated.

(v) The Peruvian NPPO must maintain records of trap placement, checking of traps, and any quarantine pest captures. The Peruvian NPPO must maintain an APHIS-approved quality control program to monitor or audit the trapping program. The trapping records must be maintained for APHIS review.

(d) Packinghouse procedures. (1) All packinghouses that participate in the export program must be registered with the Peruvian NPPO.

(2) The peppers must be packed within 24 hours of harvest in a pest-exclusionary packinghouse. The peppers must be safeguarded by an insect-proof mesh screen or plastic tarpaulin while in transit to the packinghouse and while awaiting packing. The peppers must be packed in insect-proof cartons or containers, or covered with insect-proof mesh or plastic tarpaulin, for transit into the continental United States or its Territories. These safeguards must remain intact until arrival in the continental United States or its Territories or the consignment will be denied entry into the continental United States or its Territories.

(3) During the time the packinghouse is in use for exporting peppers to the continental United States or its Territories, the packinghouse may only accept peppers from registered approved production sites.

(e) Phytosanitary certificate. Each consignment of peppers must be accompanied by a phytosanitary certificate of inspection issued by the Peruvian NPPO stating that the fruit in the consignment has been produced in accordance with the requirements of the systems approach in 7 CFR 319.56-73.

Done in Washington, DC, this 20<sup>th</sup> day of April 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015-09577 Filed: 4/23/2015 08:45 am; Publication Date: 4/24/2015]